

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RONALD R. BRATTON,

Plaintiff,

vs.

No. CIV 04-0074

JB/RLP

CITY OF ALBUQUERQUE,
a Municipal Corporation,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Defendant's Motion to Dismiss Counts 1 Through 3, and 6 Through 12 of the Complaint for Declaratory Judgment, filed March 23, 2004 (Doc. 9); the Plaintiff's Motion for Permanent Injunction and Request for Declar[a]tory Judgment on the Merits, filed March 29, 2004 (Doc 7); and the Defendant's Motion for Summary Judgment on Counts 4 and 5 (Equal Protection), filed May 7, 2004 (Doc. 19). The Defendant, City of Albuquerque, removed this case from state court to federal court. See Notice of Removal, filed January 27, 2004 (Doc. 1). The Court held a hearing on these motions on June 2, 2004. At that hearing, the Plaintiff, Ronald R. Bratton, moved to dismiss with prejudice all of his federal claims. Because there are now no federal claims left in this case, and the remaining state claims involve construction and application of state and local statutes and regulations best left to the state court, the Court will grant Bratton's oral motion to dismiss all of his federal claims and will remand the case with its remaining claims to state court.

PROCEDURAL BACKGROUND

Bratton's Complaint seeks a declaratory judgment that Rule 311.3(B) of the City of Albuquerque Personnel Rules and Regulations is unconstitutional under the New Mexico and United States Constitutions. The challenged portion of the City of Albuquerque personnel rule states:

No person shall engage in political activity that diminishes the integrity, efficiency or discipline of the service. No employee will participate in the following types of activity:

- B. Be a candidate for or hold an elective office of the State of New Mexico or any of its political subdivisions.

Bratton asks the Court to declare the rule unconstitutional and enjoin the City from terminating his employment as Assistant City Attorney pending the declaratory judgment decision. See Complaint for Declaratory Judgment and Motion for a Temporary Restraining Order, filed January 20, 2004 in the Second Judicial District Court, County of Bernalillo, State of New Mexico and attached to the Notice of Removal, filed January 27, 2004 (Doc.1) ("Complaint"). Bratton wishes to remain a City employee while he runs for the elected office of Metropolitan Court Judge. See id. ¶ 70, at 14.

The City moves, pursuant to rule 12(b)(6) of the Federal Rules of Civil Procedure and local rule 7, see D.N.M. LR-Civ. 7, to dismiss Counts 1 through 3 and 6 through 12 in Bratton's Complaint on the grounds that these counts do not state a claim upon which the Court may grant relief. The City also moves, pursuant to rule 56 of the Federal Rules of Civil Procedure and local rule 7, see D.N.M. LR-Civ. 7, for summary judgment on Counts 4 and 5 of Bratton's Complaint on the grounds that there are no genuine issues of material fact as to those claims based on which a reasonable jury could find in favor of Bratton. Bratton seeks a permanent injunction preventing the City from enforcing Rule 311.3(B) of the City of Albuquerque Personnel Rules and Regulations or

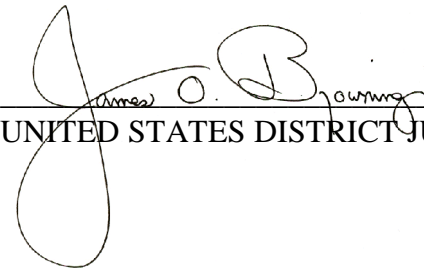
any Administrative Instruction enacted on the same grounds.

ANALYSIS

Bratton's Complaint brings claims based in both federal law and the laws of the State of New Mexico. At the hearing on these motions, Bratton moved to dismiss all of his federal claims. See Clerk's Minutes, filed June 2, 2004 (Doc. 26). The City did not object. See id. The Court granted that motion.

This Court has supplemental jurisdiction over Bratton's remaining state law claims pursuant to 28 U.S.C. § 1367. The decision to exercise supplemental jurisdiction is within the Court's discretion. See Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 351 (1988); Archuleta v. Lacuesta, 131 F.3d 1359, 1368 n.4 (10th Cir. 1997). There are no remaining federal claims. The remaining state claims will require interpretation and application of state statutes and local rules that are better left to the state court. The Court will, therefore, remand the remaining state law claims for the state court to decide them. Thus, the Court need not address the three motions before it.

IT IS ORDERED that all of the Plaintiff Ronald R. Bratton's federal claims are dismissed with prejudice. The case and all remaining claims are remanded to the Second Judicial District, County of Bernalillo, State of New Mexico.


UNITED STATES DISTRICT JUDGE

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